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NOTA BENE

A Forum for News, Features, & Opinions in the Law School Community

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Controversy Surrounds Opening of the MLK Memorial

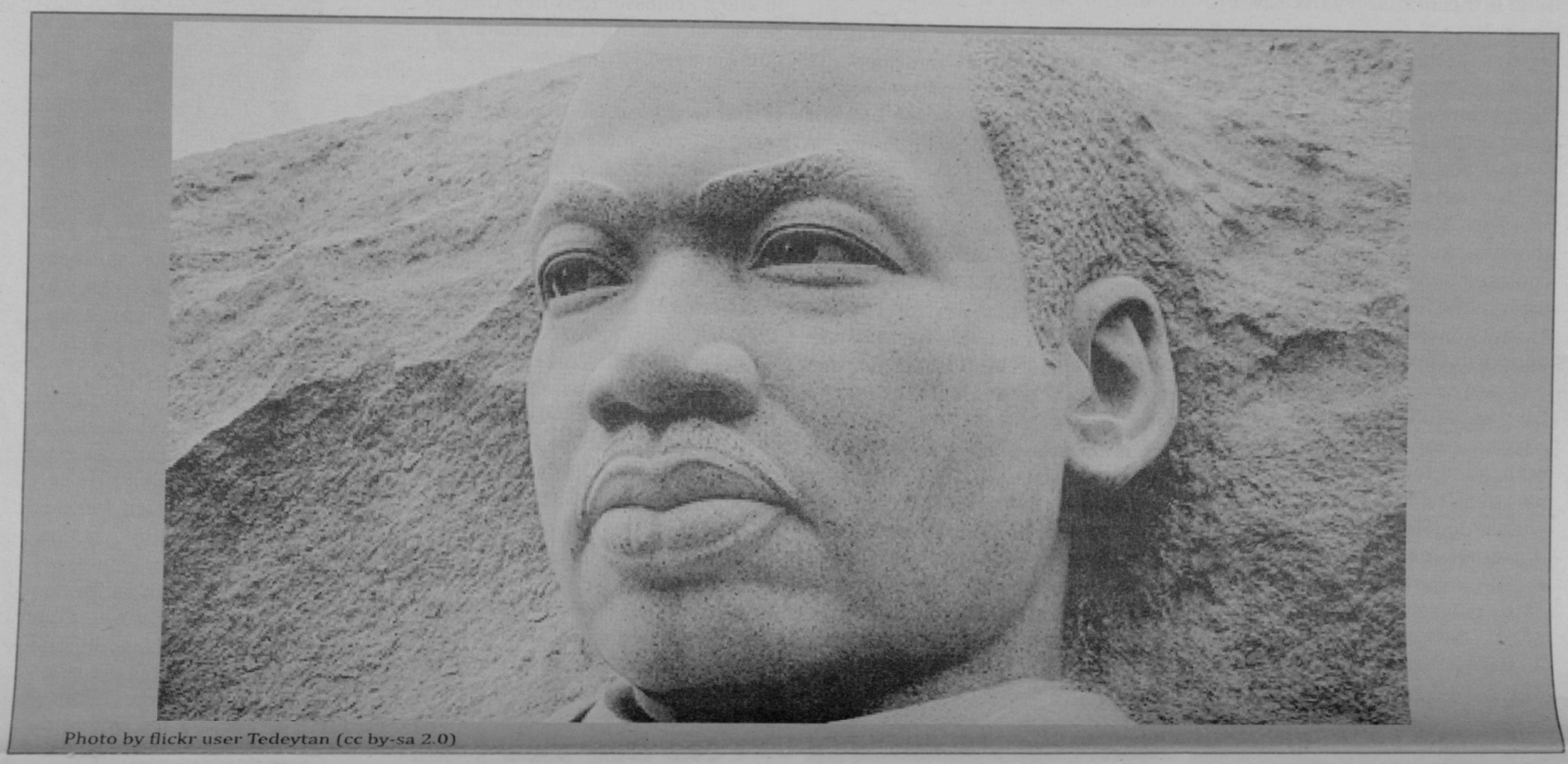

Photo by flickr user Tedeytan (cc by-sa 2.0)

By Bradford L. Seamon, Jr.
Staff Writer

The newly erected Martin Luther King, Jr. Memorial opened to the public on August 22, 2011. The memorial borders the Tidal Basin and covers about four acres slightly southwest of the National Mall. It is located between the Lincoln and Jefferson memorials in symbolic fashion. A granite statue of Dr. King, which serves as the memorial's centerpiece, stands 30 feet tall. It portrays Dr. King emerging from a stone mountain, representative of the "stone of hope" he often referenced in his speeches. A 450-foot long granite wall forms a semicircle around the statue. On this wall, fourteen excerpts from an array of Dr. King's speeches are inscribed in a linear pattern. The statue shows Dr. King standing with his arms folded, holding a piece of paper as if looking out over a crowd gathered to hear him speak. The statute's design is said to be in the likeness of Dr. King's most famous "I Have a Dream" speech. Although the memorial is not the first in Washington, D.C. to honor an African American, it is the first to be located in sight of the National Mall. The memorial's completion marks the realization of a 20 year initiative.

While many approve of the memorial, viewing it as a symbol of appreciation for a man who sacrificed his life for the cause of justice and equality in America and throughout the world, several critics of the memorial have also emerged, claiming that the memorial does not adequately serves its intended purpose. A paraphrased quote, inscribed on the side of the Dr. King's statute, has drawn particularly severe criticism. The inscription reads, "I was a drum major for justice, peace, and righteousness." In the original, taken from a 1968 sermon entitled "Drum Major," Dr. King said, "Yes, if you want to say I was a drum major, say that I was a drum major for justice. Say that I was a drum major for peace. I was a drum major for righteousness."

The sermon was an attack on individuals who constantly desire to standout above the cause and seek sole credit, or in other words, to be the "drum major," and so some believe that the truncated version of the quote directly contradicts what Dr. King was actually advocating. A lead editorial in the Washington Post claimed the paraphrase turned a "conditional statement into a boast," and many revered public figures, most notably poet Maya Angelou, have publicly denounced the quote, suggesting that it makes Dr. King sound "arrogant and vain."

Despite strong efforts to have the inscription removed or replaced, the lead architect has remained firm in his defense of the quote, explaining that there was no better way to define King than through his own words. Supporters of the inscription also insist that space constraints precluded the entire direct quote from fitting into the designated area.

The memorial has also received a considerable amount of criticism based on the fact that it was neither sculpted by an American artist on American soil nor built with American materials. In fact, Dr. King's memorial was made in China with Chinese marble by sculptor Lei Yixin. For sentimental reasons, many critics believe Dr. King's memorial should have been a purely American product, a suitable demonstration of gratitude and admiration from his home country, where his impact and legacy are most evident. Such critics view the foreign elements as doing a disservice to Dr. King and find it hard to believe that there were no worthy sculptors available right here in America. They point to the memorials of Jefferson, Lincoln, and FDR, which were all sculpted inside the country with U.S. marble.

In the sculpture's defense, the Martin Luther King National Memorial Project Foundation contends that the Chinese marble is of better quality than that found in the U.S., and they also proclaim to have saved $8M by outsourcing the memorial's construction to China. Furthermore, the foundation cites Dr. King's lifelong mission for equal opportunity as support for an international selection process that is open to all.

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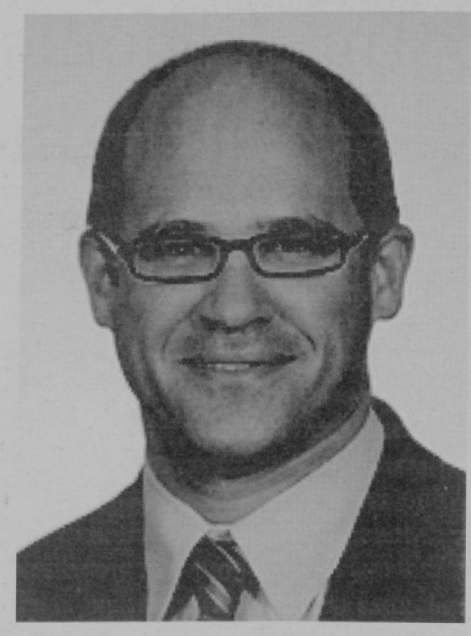
NEWS

Office Hours: Professor Orin Kerr

By Stephanie Levitt
Staff Writer



His favorite number is five. As a law student, administrative law fascinated him. He is ranked #7 among criminal law scholars in the United States for citations in academic journals, and, three weeks ago, one of his blogs was cited by the D.C. Circuit. Who is this tech-savvy GW Law Professor?

It's Orin Kerr, professor of Criminal Law, Criminal Procedure, and Computer Crime Law.

"When I was in law school," Professor Kerr reminisced, "I remember thinking that my professors had the coolest job in the world. They got to explore the ideas and write insights. I knew from law school that I wanted to try it."

Early on, Professor Kerr developed a passion for teaching. The law, on the other hand, took some time to attract his attention. Fresh out of undergrad with a double major in Mechanical Engineering and Public Policy from Princeton, he chose a path: the path of the scientist.

"I tried engineering in graduate school. That was a disaster," he said. On second thought, "don't say that it was a disaster. I knew right away that I was not meant to be an engineering graduate student."

So he went to Harvard to pursue a law degree. After graduating, he clerked for a judge in the 3rd Circuit Court of Appeals, and was later accepted into the Honors Program at the Department of Justice (DOJ). After spending a year exploring the DOJ's numerous sections, Professor Kerr applied to work specifically in the Computer Crime and Intellectual Property Section, and was hired—by mistake.

The section had merely intended to interview him but accidentally filled out the hiring paperwork.

"They had tried to fire me and the chief of the section informed me that he was very frustrated because he had been unable to. He was not a touchy-feely guy," said Professor Kerr.

Three years later, when Professor Kerr left the DOJ to become a professor here at GW Law, "the person who made the mistake stood up and told me that I was the best mistake he'd ever made. Predictable, but very nice." As a professional academic, Professor Kerr has also taught classes as a visiting scholar at the University of Chicago, in 2006, and most recently, at the University of Pennsylvania, where he spent the Spring of 2011.

Professor Kerr maintains that teaching at other schools is not all that different from teaching at GW. "The classes are the classes and I teach them exactly the same way. The students at Chicago were a little bit different in that they were more gunners. They would refuse to volunteer because that was considered uncool, but they all wanted to be called on. It was very strange."

Teaching isn't the only way Professor Kerr spends his time. He has also been known to litigate cases pro-bono, including the case of Lori Drew, a woman charged with violating MySpace's terms-of-service by allegedly participating in a MySpace hoax that was blamed for the suicide of a thirteen-year-old girl, a girl who had once been the friend of her daughter.

The case was tried in California, and, in 2009, Professor Kerr flew there to represent Lori Drew, successfully arguing a motion to dismiss.

"I had written a law review article warning that some day the Justice Department would try to prosecute people for terms-of-service violations and for breaching contracts online." That article, *Cybercrime's Scope: Interpreting Access and Authorization in Computer Misuse Statutes*, can be found at 78 N.Y.U. L. Rev. 1596 (2003). "The Lori Drew case—a great case—was based exactly on the theory that I had warned about in the article. I contacted the defense attorney and started advising him on arguments to make and pretty soon I just joined the defense team and made the arguments myself."

Professor Kerr strongly believes in the value of scholarship, contending that scholars better understand the issues pertaining to their areas of interest. "It's easy to dismiss the role of scholarship because obviously some of the scholarship is bad," he said. "Some of it is hopeless—it's so theoretical that it's not going to impact anything. But if you target scholarship for the courts or for legislators, I found that they are surprisingly open and interested in these issues. I think it's a really powerful combination—to be able to do the theory and walk into a courtroom and argue it—because I think it not only means that you're bringing the depth of an issue that an academic can, you can also bring out the practical side."

In Professor Kerr's experience, law review articles aren't the only means of influencing legal professionals and the law. He also writes for the popular legal blog The Volokh Conspiracy, as well as for the SCOTUSblog.

"What's amazing about blogs," he said, "is that you have this real-time dialogue where an opinion comes out, and two hours later, you can have commentary about it. If you're a judge who has a pending case, you can get real-time feedback. It's amazing."

According to Professor Kerr, if you really want credit and influence, law review is the way to go. But he warns against underestimating the power of blogs. "I've written blog posts and then gotten e-mails from the judges," he laughed. "It's kind of interesting."

Professor Kerr also claims to have a not-so-secret agenda to nudge people into working with the dark side of human nature—that is, as a criminal law professional. He believes that criminal law cases are often the most interesting and easiest law cases to understand. He joked, "There's a reason why there's a TV show Law and Order, not Civil Procedure. And it's an awe-inspiring thing to introduce yourself and say 'On behalf of the United States.'"

In fact, he recently argued Davis v. United States before the Supreme Court, representing Davis, an experience he describes both as "nerve-wracking" and "remarkable." "You aren't sitting there thinking 'Oh, isn't this fun? Isn't this great? I get to argue for the Supreme Court?' You're calculating, 'who are my five votes? Can I get to five? Who do I need to persuade?'" he said.

"Some cases are easily winnable by both sides and it comes down to the quality of advocacy. But most cases aren't like that. In most cases, it's pretty set by where the judges are coming from. They're not going to be influenced by a great oral argument or a terrible oral argument. It's the issue, not the argument," he said. "When Justice Scalia says, 'I think it's absolutely this kind of problem, not that kind of problem,' you could say, 'You're wrong.' If he just looks at you and rolls his eyes, you're not going to persuade him."

Davis was affirmed in favor of the prosecution in a 7-2 decision.

"I mostly let it fall into the past," said Professor Kerr. "It would have been really cool if I had won. Maybe I would listen to it more." But despite a loss, he will never forget the moment when Justice Roberts nodded his head and said, "Mr. Kerr."

Now, Professor Kerr's attention has returned to teaching and writing, including a new law review article on cell phone surveillance. He's also keeping up to date on the amendments to computer crime laws Congress has been considering, in an effort to exert what influences he can with his knowledge and opinions.

"Teaching and writing," he said, "the usual." Just living the life of a law professor—"the coolest job in the world."

Nota Bene

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Nota Bene is a bi-weekly student publication at The George Washington University Law School. Nota Bene serves as a forum for news, features, and opinions in the law school community.
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NEWS

Virginia I.C.E. Office Implements Harsh New Enforcement Tactics

By Prerna Lal
Staff Writer

Washington D.C. resident Matias Ramos (25) was on his way back from Minnesota last year when he was stopped by Transportation Security Administration officials and asked to produce his immigration documents. A UCLA graduate and a fellow at the Institute for Policy Studies, Ramos was brought to the country at the age of 13 from Argentina under the visa-waiver program. His family ended up overstaying in the United States and Ramos had no other option but to grow up undocumented.

When Immigrations and Customs Enforcement (ICE) officials got a hold of him, time was of the essence. As a 13-year old entering under the visa-waiver program, Ramos had unknowingly waived his right to a pre-removal hearing in front of an immigration judge. Locked up in detention, Ramos was unaware of his legal right to appeal the constitutionality of the waiver as ICE hustled around ready to deport him back to Argentina. Once in Argentina, Ramos would have faced a 10-year bar from re-entering the United States, the country that was now his home.

Ramos was represented by Andres Benach, a GW Law alum and a Partner at Duane Morris LLP, who handles high-profile deportation cases. Working with policy advocates and officials at the Department of Homeland Security (DHS), Mr. Benach managed to get Ramos out of deportation and paroled in the United States, by successfully advocating for the exercise of prosecutorial discretion, which is generally reserved for certain exceptional cases. Ramos was given work authorization and told to check in with ICE periodically.

Less than two weeks ago, Ramos and his long-time girlfriend (herself a U.S. citizen) went to check-in with his case officer at the Fairfax, Virginia ICE office. Ramos walked out wearing an electronic monitoring bracelet. The bracelet must be charged by standing next to an electrical outlet for at least three hours a day . This time, he had only 14 days before he would be forced to leave the country.

Despite a push within the Obama Administration to focus deportation efforts on serious criminals and national security threats, some immigration officials seem to have missed the memo.

"I have had more clients deported in the last one month than I have had in five years," Mr. Benach said. He suspects that under the authority of a new field officer, the Fairfax ICE office wants to place an ankle bracelet on everyone in removal proceedings in this jurisdiction.

"President Obama gave someone a contract to put an electronic shackle on me," Ramos told me after he had recovered from the initial shock of having the bracelet around his ankle. Ramos was referring to the fact that the local ICE office has a contract with Behavioral Intervention Incorporated, operators of one of the biggest private for-profit prisons in the country. A practice previously reserved for serious criminal offenders on parole, shackling immigrants in removal proceedings with electronic monitoring bracelets is now widely regarded as an alternative to detaining them.

"BI is an immigration enforcement profiteer whose practices threaten civil liberties," said Ramos. "They are better at being ICE than ICE," Mr. Benach said, noting that the increased privatization of immigrant detention is likely to pose trouble for immigration lawyers and clients alike. As I was leaving his office, Mr. Benach told me about another client who had also been shackled with the device by BI Inc.: a 60-year old woman with four dependent children—all of whom are U.S. citizens.

Ramos may yet have a happy ending. After thousands of calls and emails on behalf of Ramos flooded the ICE office in Fairfax, BI Inc. called Ramos a couple days ago, telling him they were coming to remove his tracking device. Their offices sent Mr. Benach another six month stay of removal for Ramos, even though the deportation order from ICE still stands.

"They couldn't wait to take it off me. But others may not be so lucky," he noted solemnly.

Prerna Lal is a GW Law 2L. She blogs at www.prernalal.com, and can be reached at plal@law.gwu.edu.

NBA Players Union Decertifies, Possibly in Vain

By Thomas Renkes
Staff Writer

This summer, in pursuit of ending the NFL lockout as quickly as possible, the NFL Players Association (NFLPA) decided to decertify, dissolving itself as a union, and opening up individual players and NFLPA lawyers to file an antitrust lawsuit against the NFL. While the union ceased to be the sole bargaining power for the players, the heads of the owners group and the players association remained at the bargaining table. While much ado was made in the media about the *Brady v. National Football League* case, ultimately, the lawsuit was a strategic move designed to put pressure on the NFL to get a deal done. Moving forward with the litigation could have resulted in players receiving trebled damages pursuant to federal antitrust laws.

In the media, the decision to decertify was sometimes portrayed as a "silver bullet" that allowed the players to file suit and pressured the owners to get a deal done—especially because Judge David Doty had already appeared to be deferential to the players. This portrayal has colored coverage of the subsequent NBA lockout, with the NBA Players Association (NBAPA) considering decertification as a means of putting pressure on the NBA owners to either get a deal done or face massive damages. While this tactic seemingly worked for the NFL, the NBA players are in a distinctly different position.

The NBA has much greater financial problems than the NFL did last summer. The NFL is a media juggernaut, generating billions in revenues. Teams operate within a strict profit sharing system that spreads the wealth between teams, maintains a hard salary cap, and doesn't require contract guarantees. The NBA, on the other hand, is a league that struggles to make profits in its smaller markets, has no hard salary cap, and has guaranteed contracts for players.

Whereas the NFL owners were looking to maximize their profits, the NBA owners—or at least some of them—are fighting to stay above water as superstar players congregate in big money markets. The NBA predicament more closely resembles the one faced by the NHL before the 2004-05 season. Ultimately, the NHL cancelled the season entirely. While the NBA has so far only had to cancel preseason play, it remains to be seen whether there will be an NBA season this year. In the end, it all comes down to money.

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Solyndra Scandal Causes White House Heartburn

By Megan Brown
Staff Writer

The downfall of Solyndra, the White House's poster child for green jobs, continues to cause heartburn for the Obama administration as House Republicans press to use the situation to their advantage. Over the summer, solar energy company Solyndra, announced that it would be filing for bankruptcy and laying-off 1,100 employees.

Solyndra received a $535 million loan guarantee from the Department of Energy (DOE) in 2009. Questions have emerged about the role politics played in Solyndra's receipt of the loan. Released e-mails suggest the Obama administration bypassed certain procedural steps to approve the loan guarantee. In its communications with the White House, the Office of Management and Budget (OMB) expressed concern that it was not being given enough time to fully explore the riskiness of the loan.

The House's Energy and Commerce Committee recently began an investigation into the company's downfall and allegations of cronyism. On Friday, September 24, the Committee called Solyndra executives before it to give testimony, but, citing their Fifth Amendment rights, all refused to answer questions.

Also under scrutiny is the DOE's restructuring of the loan agreement this past February. Under the new agreement, the United State's right to repayment in the event of a default falls behind the rights of Solyndra's private investors. Such an agreement may contravene a 2005 law calling for the U.S., and thus U.S. taxpayers, to be the first repaid.

Most damaging is President Obama's political relationship with the company; one of Solyndra's financial backers, George Kaiser, acted as a bundler for Obama's 2008 campaign, raising $50,000. According to White House visitor logs, Solyndra officials and investors have visited the White House 20 times between March 2009 and April 2011.

This scandal raises broader questions about the viability of the green energy sector. When the administration launched its loan guarantee program, it claimed the program would save or create 65,000 green energy jobs. A recent investigation by the Washington Post found that, although almost half the available funds have been used, only 3,545

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OPINIONS

The Death Penalty, Revisited

By David Keithly
Opinions Editor

I believe in the idea of the death penalty. I believe that there are certain lines in a civilized society that you simply cannot cross and be allowed to remain a member of society. When humanity witnesses something abhorrent, the death penalty is its ultimate recourse.

As an ultimate recourse, I believe that the death penalty should be used sparingly. In a sense, the death penalty is like a nuclear weapon. We live in a world that requires us to have nuclear weapons. Other countries must know that if they were to try to destroy us, we would resort to using our nuclear weapons if we were left with no other options. But this sort of final action must only be used when there truly are no other viable options. Killing another human being is the most extreme action a society can take. It should only be employed in extreme circumstances when no other option can make the statement that humanity must make.

In practice, the death penalty in the United States has been something of a disaster. Rather than a statement that re-affirms the sanctity of human life, it has become an over-used tool to exact revenge on those who cannot afford an adequate defense.

Last Wednesday (September 21) we executed two men: Lawrence Brewer and Troy Davis. One of these executions was justified; the other was not. I used to believe that the death penalty made a statement that was so important to society that its continued use was justified even if occasional mistakes were made. I no longer believe that.

In 1998, Lawrence Brewer and two of his buddies picked up a hitchhiker named James Byrd. Instead of delivering Byrd to his destination, Brewer and his white supremacist buddies drove the black man to a remote location where they beat him severely, urinated on him, and then chained him by the ankles to the back of their pickup truck and dragged him for three miles before he was finally decapitated. Brewer and his buddies then dumped Byrd's remains and went to a barbecue. Brewer was found, tried, convicted and sentenced to death. On Tuesday, before his execution, Brewer told a local news station: "As far as any regrets, no, I have no regrets. No, I'd do it all over again, to tell you the truth."

Troy Davis was convicted and sentenced to death for murdering an off-duty police officer in August of 1989. Although he maintained his innocence until the end of his life, several witnesses testified that Davis was pistol-whipping a homeless man when the off-duty officer tried to intervene. After Davis was convicted and sentenced to death, several of the witnesses who testified at trial changed all or part of their testimonies. There were also several inconsistencies in the handling of the evidence for the trial.

These two cases illustrate the difficulty I'm having with the death penalty. In my mind, Lawrence Brewer needed to die. His crime was abhorrent, he admitted his guilt and made it clear that if given the opportunity, he would do it all over again. We simply cannot let monsters like Brewer to continue to live in society after they've shown us who they are and what they're capable of.

Troy Davis presents a harder case. I don't know whether or not Troy Davis was guilty of murder. The stories in the news about his trial and conviction make me uneasy. I'm not sure Davis was guilty – and before we resort to the ultimate recourse of the death penalty, we have to be sure.

I'm concerned by the finality of the death penalty. I'm disturbed because we're all human – even judges, juries and attorneys – and we all make mistakes. If there were a way to truly know – beyond a reasonable doubt – whether someone was innocent or guilty, I would have no problem killing murderers. But we can't truly know.

According to the Innocence Project, a nonprofit legal clinic associated with the Cardozo School of Law, "there have been 273 post-conviction DNA exonerations in the United States....17 of the 273 people exonerated through DNA served time on death row." So there have been 17 people since 1989 who we were ready to kill until DNA evidence showed us that we had made a mistake.

I believe in the idea of the death penalty. I even believe in the practice of the death penalty for the Lawrence Brewers of the world. But because of the question marks like Troy Davis along with the 17 men who we almost accidentally sent to their deaths and the numberless innocents who we've surely killed unknowingly, I think that the death penalty is a final recourse that we simply cannot afford to use.

Bigger Problems than the Death Penalty

By Robert Stephens
Staff Writer

The Troy Davis case has become the most recent poster-child for anti-death penalty advocates. Troy Davis, a Black man, was executed on Wednesday for the 1989 killing of Mark MacPhail, a White off-duty police officer. At his trial, Davis was convicted primarily based on witness testimony, but the defense claims that at least seven of those witnesses have recanted their testimonies. Davis was also convicted of the non-fatal shooting of another man just hours before Officer MacPhail was killed. Shockingly, the shell casings from that earlier shooting were mixed in the same bag with the shell casings from the Officer MacPhail shooting, adding to the dubious nature of Davis' conviction.

Unfortunately, the Troy Davis case isn't the only example of our legal system convicting someone with questionable evidence or procedural errors. Take the case of Seemona Sumasar, a mother and restaurant owner, who accused her ex-boyfriend of rape. In an effort to punish her, the ex-boyfriend fabricated a series of robberies that implicated Sumasar using his basic knowledge of police procedure. Seemona was then jailed for 7 months while awaiting trial before police discovered that they'd been duped.

Clearly, systemic inequality permeates the entire American legal system. The racial element, paired with glaring evidentiary flaws, has led to a tremendous public outcry against the Davis execution. Protests have occurred in over 200 countries, and many celebrities from the Pope to Diddy have called for Davis to be released from death row. In the process of this cultural uproar, Troy Davis has become the latest martyr for the anti-death penalty crusade.

While this sentiment is commendable, I think that it must be sobered by a recognition that the alleged racial discrimination that led to Davis' death sentence is not limited to death penalty politics. The same racial discrimination that exists in the legal system is merely a manifestation of the bias that we carry within ourselves. Let's be clear. Troy Davis was a thug who shot at least one person on the day the Officer MacPhail was killed. While that doesn't mean we should have killed him, the troubles for felons in his position are much deeper than the death penalty. Black felons face limited job opportunities upon release and the rates of recidivism and length of survival (time before re-entering prison) are worse than their White counterparts. Even if Davis, or other felons like him, were given life sentences instead of the death penalty, the conditions they face are so horrible that earlier this summer prisoners in the California prison system went on a hunger strike that nearly killed many of the protestors.

The bigger problem that we face as a society is that even if there were no death penalty (and Troy Davis were not famous) his quality of life, whether in prison or in society, would have been poor.

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ALL LETTERS ARE SUBJECT TO APPROVAL BY THE EDITOR-IN-CHIEF BEFORE PUBLICATION.

OPINIONS

Editorial:

What is a Newspaper? What is the News?

By Katherine Mereand
Editor in Chief

In the coming months, I hope to answer this question more definitively. At present, I merely seek to ask it–of everyone. What is a newspaper? What is the role of an independent press?

Nota Bene has been an independent student newspaper at The George Washington University Law School for twenty-six years. This year, after a quarter of a century of free press reporting, our ability to maintain a print edition, maintain editorial independence, and transition to having a strong and independent web presence are in doubt. We are not fighting against malevolence as much as the general apathy of the powers that be.

Despite that, we have an exciting year lined up and are ready to display a wonderful diversity of voices from amazing students, dedicated faculty, and unsung heroes in the administration and staff. We are striving to work with the Deans, the Faculty, the Staff, the Student Groups, Alumni, and the Student Bar Association to highlight the wonderful things about the law school. And in the same breath we will tell this community if and when we see items of concern or things that could be improved.

We want to hear your answers and ideas, GW Law. What is a newspaper? What is the news? Email us at notabene@law.gwu.edu. We will accept article submissions, quotes, questions, and anonymous tips.

My own answer starts with a story, but it only starts there.

I very much wanted to be a journalist when I came to GWU undergraduate in 1999–well before the terrorist attacks and before I realized how compromised journalism could become. I left the journalism major shortly after a professor told me in no uncertain terms that the only way to become a "real" journalist was to sell the news and to sell-out. Earlier that semester he had presented to the class what he called a classic hypothetical. Pretend you are a photojournalist in an African country that is experiencing a horrid plague of famine. You visit the camps of the dying to take photos to show this travesty to the world. While there, you see a young child–an infant–being approached by a vulture. The child is still alive but too weak to move. You can do one of two things. You can walk over to save the dying child who will inevitably die anyway. Or, you can take a photo which may, if you are lucky, convince the world to intervene in the famine and save a million lives.

He contended that one could be a journalist in today's world if they were not willing to take the photo let the child die a particularly horrific death before your eyes. He denied the idea that one could take a photograph and then rush to the child. That option would break the hypothetical and besides would demonstrate that you had no objectivity as a journalist.

Many years later I attended the Newseum on Pennsylvania Avenue here in DC. In an exhibit about Pulitzer Prize winning photographs I saw Kevin Carter's award winning 1993 photo of a starving child being approached by a vulture in the Sudan. I read the caption that indicated Kevin Carter committed suicide shortly after he received the Pulitzer in 1994. Back then, I reflected on the conditions in the Sudan. Today, I reflect upon the conditions in Somalia.

I also reflect upon this: when the network television stations first covered the news, they did so as a public service. It was assumed that news departments would lose money, but that providing the news was in some way the duty of media companies that had been handed the airwaves for free. Sometime in the last fifty years, with the rise of cable, for many the news ceased to be universally seen as a public service. We saw a new rise of yellow journalism and the news became a profit-making venture with graphics, gotcha journalism, and salacious details which play on and to stereotypes that sell ratings and editions. Real journalism still exists, but it fights for survival against entertainment, advertising, and sponsorship.

An independent press is a struggle to maintain but a pleasure to behold. We ask for your support, GW Law. Explore with us, report with us, talk to us, and read us this year. We want to hear your voices, tell your stories, and help you see more layers of your community than individuals alone can see.

Katherine Mereand is the Editor-In-Chief of Nota Bene. She can be reached at notabene@law.gwu.edu or at kmereand@law.gwu.edu.

The Lesson for Muslim-Americans on the 10th 9/11 Anniversary

By Talha Khan
Guest Columnist

"Our community has tough times ahead of us" declared the local imam in a small mosque in a quiet Indianapolis suburb. It was the first Friday prayer after the September 11 attacks. As I looked around the hall, I could feel the tension. I saw the fear in the faces and heard it in the voices around me. We couldn't quite believe that the nineteen men, who claimed to share our faith, committed such atrocities in the name of our faith. This was irreconcilable. A few men had hijacked four planes but they also hijacked a global religion with a billion members. Overnight we went from being just another ingredient in the melting pot to being seen as dangerous outsiders, somehow complicit in the attack. Many who had been our friends now looked at us with distrust, holding us responsible for the attacks.

We could not apologize for the attacks because we did not commit them. Islam bars killing innocent civilians under any circumstance. And yet we were being blamed as part of the new global terror threat. Unable to determine the best course of action, the Indianapolis Muslim community went into silent mode. We thought if we kept our heads down and waited out the storm, things would eventually get better in time. Looking back at our response ten years later, I can see that we made a terrible mistake.

The Imam turned out to be right. In the wake of 9/11 American-Muslims have suffered a severe backlash. According to one poll, 55% of Muslim-Americans report that it is harder to be a Muslim after 9/11. About 48% report that they have experienced harassment of some sort. One mosque site was set on fire in Tennessee, and another one was bombed in Florida. Many other mosques still receive hate mail and threats to this date. Employment discrimination against Muslims is unprecedented and on the rise. Although I sympathize with my fellow Muslims, I believe that we brought this upon ourselves – at least partially – when we decided to keep our heads down and wait out the storm. We hoped that we could remain silent and distance ourselves from the backlash, but now we're suffering the consequences of our inaction. (About 48% American-Muslims agree that Muslim leaders in the U.S have not done enough to speak out against Islamic extremists.)

We should have spoken up. If the Muslim community had taken a more proactive stand, if we had strongly condemned the violent terrorist acts, the statistics cited above might be different today. The lesson learned is quite simple: active participation in the local communities through effective outreach programs and political processes pay dividends in the long term. This is precisely what our community lacked.

But we are learning, and things are changing. This year for example, a large Bay Area Muslim organization is holding a blood drive in memory of 911 victims. Similarly a small mosque in Waco is inviting members of interfaith groups to light candles on 911 anniversary to show solidarity. There are more examples, but there need to be many more. Unless Muslims across the United States come forward and unanimously condemn terrorist actions with stronger words and louder voices, the hate against Muslims will remain in American communities. Meanwhile, the media must do a fair job of reporting efforts by Muslim communities; it's time that America should acknowledge their work. For the first time this summer President Barack Obama praised the post-9/11 efforts by Muslim-Americans, which is a great start. Americans – Muslims or otherwise – should work in our local communities to address misunderstandings; and together we can soon make this society free of religious bias and racial prejudice.

Issue Two Corrections:

- The article *Applicants and Enrollment Decline in 2011*, published in our last issue, incorrectly stated that the only Ivy League schools represented by the entering class of 2014 are Princeton, Yale and Penn. The error was due to a misreading of inexact language used in the writer's source. These three schools are disproportionately represented among the entering class, but betweeen one and two students do hail from each of the remaining Ivys. Apologies to those students for the oversight.
- In addition, a University of Michigan graduate took issue with the fact that Notre Dame was mentioned in the article *Applicants and Enrollment*, while UMich was not. In correcting this oversight: Ten entering students hail from UMich, one of the most well represented ungraduate institutions among students of the entering class of 2014. Respect.

OPINIONS

The Palestinian Bid for Statehood: Self-Determination or Alienation of Jewish State?

By Harry Hudesman
Staff Writer

Since the 1896 publication of Theodor Herzl's Der Judenstaat, the Zionist dream has swept across the Diaspora. The flame of hope that had burned for centuries in the hearts of the exiled Jewish people was only intensified by the words of the Hungarian sage. Fifty-Two years later, Herzl's dream of a Jewish homeland became a reality when Israel became a state.

In the run-up to Jewish statehood, the Holocaust decimated the Jewish people. In the wake of unspeakable tragedy, the world recognized that the time had come for colonialism to end in the land of Israel. Independent governments were to be created for both Palestinians and Jews. After the Palestinians rejected the UN resolution, the Jewish state of Israel was formed in 1948. In the past 63 years, Israel has grown into one of the most advanced societies in the world, not just technologically but also socially and democratically.

Last week, Palestine put forth a bid for membership to the United Nations as an independent state. Why is a unilateral quest for statehood by the Palestinian Authority ("PA") now necessary when Israel is standing by to negotiate a two state solution? The PA thinks that their unilateral action will lead to more alienation of Israel that will further delegitimize the state and potentially garner greater support for Palestinian causes.

The Palestinian people have remained stateless because of their own leadership. In 2000 and 2001, PLO leader Yasser Arafat rejected deals that would have given the Palestinians all of Gaza, 97% of the West Bank and East Jerusalem as the capital of a Palestinian state. Instead of accepting these offers, Arafat preferred to leave innocent Palestinians living like refugees. Today, the world sees the resulting squalor in Gaza City and Rafah.

Despite Israel's willingness to compromise, the PA continues to make irrational demands. Israel cannot agree to have indefensible borders and will not cease to exist as a Jewish State. Aside from those two non-negotiable issues, Israel is willing to compromise on nearly every other point. Recently, Israeli leaders have even risked alienating their own constituents by offering the PA almost everything they claim they want. This willingness to sacrifice in the fact of party opposition was demonstrated by Yitzhak Rabin. After negotiating the Oslo Accords, a radical Israeli gunned down Israeli Prime Minister Yitzhak Rabin because of his concessions.

While the PA claims that it wants peace, its actions tell a different story. The PA's attempt at unity with Hamas instead of an agreement with Israel shows where the PA's priorities remain. Hamas is a terrorist organization that has the destruction of Israel in its charter. Claiming that unity with Hamas is in preparation for peace with Israel is inconsistent. Hamas openly admits it does not recognize Israel's right to exist and will not cease its holy war until the land of Israel belongs to the Palestinians. How can Israel negotiate when the other party has allied itself with a group that is committed to Israel's destruction?

The Palestinian people deserve a state just like their Jewish neighbors. In order to reach that goal, both parties must make concessions. While the PA wants to be viewed as moderate, it refuses to make concessions regarding the indefensible pre-1967 borders. The PA talks about a lasting peace while at the same time it endorses radical acts and terrorist actions, honoring those who have strapped bombs to their chests, killing innocent Israelis.

The Oslo Accords lay out a roadmap that dictates a need for negotiation, not unilateral action. PA President, Mahmoud Abbas has been acting in direct violation of this agreement. If self-determination and a home state truly are the goal, then where are the concessions? Israel cannot afford to be the only side making painful sacrifices.

Under the leadership of Prime Minister Benjamin Netanyahu, the Israelis have regularly looked past irresponsible acts by the PA and Hamas such as rocket attacks from the west and cross-border attacks from the east. In the face of this forbearance, the PA has attempted to unify with a terrorist organization and cut Israel out of the peace process regarding land that must be shared.

This stunt at the United Nations will not improve the situation, rather it will bring harsher struggle that will further highlight the impasse in the Middle East. This struggle will be evidenced by increased border violence and unparalleled strain between Israel and its Arab neighbors. The bid is a stunt because the PA knows the only effect it will have is alienating Israel. The bid will also alienate Israel's steadfast ally, the United States. This alienation will be seen most by the spotlight put on Israel for rejecting the bid and the greater danger that Israel will be in amongst its neighbors due to the Palestinian rejection. The action is a step backwards in the Palestinian quest for statehood. Regardless of what the PA says, it relies on Israel and the US for aid and the limited economic stability it enjoys. The PA cannot afford to make them enemies.

While Israel is not perfect, the geographically miniscule state has tried to act as best as possible in accordance with international pressure despite the double standard and hypocritical treatment the UN has shown. The world has begun to recognize the constant condemnation of Israel for defending itself from belligerents as sub-standard treatment.

Additionally, the settlements in the West Bank are framed as the greatest sin, which hold back peace negotiations from continuing. In reality, whether the Israeli settlers continue building or put down their hammers today, Palestinian leadership will never recognize Israel's right to exist as a Jewish state with Jerusalem as its capital. This is evidenced by the unilateral withdrawal of all Israelis from Gaza in 2005. The Palestinians were given what they wanted but the rockets kept raining down. The rejection of Israel's right to exist is why negotiation is avoided. Even today, the idea of Jews in their own state is too repugnant for some.

Ultimately, the PA sees this quest for statehood as necessary because the PA feels it must alienate Israel further in an attempt to delegitimize the state. The PA is taking the route Turkey did in supporting a public image disaster for Israel. Turkey knew the Flotilla, which sailed in May 2010 to break the naval blockade on Gaza would not succeed; yet the ships were sent anyway. They were sent because the radicals aboard knew, although the IDF would do its job ethically, the media would frame Israel as evil. Abbas has learned from Turkish Prime Minister Recep Tayyip Erdogan that taking advantage of an international situation and letting the media blame Israel can chip away at the State's legitimacy in the eyes of the moderate west.

Unfortunately for Abbas and the Palestinian people, the US will veto any actions brought to the UN Security Council and the Israeli people will not allow their country to be invaded. Only responsible colloquy will break the impasse between Israel and the Palestinian people. Peace between the two groups is not impossible as evidenced by the miraculous creation of the modern state of Israel that was an aspiration for far longer. When there was doubt, Herzl reminded Jews of the Diaspora that, "If you will it, it is no dream."

MLK Memorial Continued from Front Page

Other critiques directed towards the memorial have been less pronounced. One New York Times critic suggested that Dr. King's demeanor is too stern, and as a result is more reminiscent of a warrior or ruler than a progressive minister. Others have taken issue with the fact that a large portion of Dr. King's legs and feet are not visible, leading some to believe that the project was rushed and not as meticulously crafted as other memorials. Perhaps most controversially, some take issue with the fact that Dr. King is facing the memorial of Thomas Jefferson, a man who owned hundreds of slaves and opposed many of Dr. King's ideologies. Critics of the statue's positioning believe it would be more appropriate for Dr. King to be facing the memorial of Abraham Lincoln, the man who emancipated slaves and also the site of Dr. King's most coveted speech, which inspired the statue's image.

Despite the plethora of personal opinions and critiques, supporters and critics alike can agree that the Martin Luther King Jr. Memorial is a well-deserved recognition of a man who has profoundly impacted American society as we know it.

Decertification Continued from Page 3

NFL owners had a vested profit interest in getting the league back on the field, In contrast, many NBA owners, after sustaining years of heavy losses, have a vested interest in keeping the game off the court.

NBAPA threats to decertify have led the NBA owners to file National Basketball Association v. National Basketball Players Association, seeking declaratory relief barring the NBAPA from decertifying. The suit alleges that threats to decertify violate federal requirements to bargain in good faith. Not only would this lawsuit bar the decertification/lawsuit stratagem used by the NFLPA, but it is a clear indicator that the NBA negotiating climate is significantly more hostile than the NFL's was.

Solyndra Scandal Continued from Page 3

permanent new jobs have been created. The DOE contests these findings.

Industry groups like Solar Energy Industries Association show continued growth in the solar energy sector. In a new, burgeoning field like green energy, anticipating which firms will succeed and which will fail is difficult. The optics of this scandal, however, could deflate interest in green energy investments for the near future..

FEATURES

DAVID MUELLER

Saint Louis Will (Maybe) Sign Albert Pujols

What a fortnight for sports: we live in a world where the Detroit Lions are undefeated, where the best basketball is contracted to play in Turkey, and where the Saint Louis Cardinals charge into that final wild card slot of the National League. The Cardinals are riding a beleaguered bullpen, a few strengthening starters, and the surging Albert Pujols. In September, he has reached base 45% of the time and has slugged his way into many more Middle Western hearts. So take this Nota Bene to your nearest room with a tile floor, adequately prep your porcelain, and settle in for a little talk about my favorite Pujols.

In 2004, the Saint Louis Cardinals signed one of the 20 best baseball players to ever live to a seven-year, $100 million contract with a $16 million club option. So, you know, when one of the 20 best players to ever live had his contract expire, the club... ummm... used that $16 million option. Albert Pujols wanted $30 million. This past off-season Albert Pujols reportedly wanted another long term deal. This time he asked for a 10-year $300 million deal. Albert Pujols, at this writing, put up a 2011 line of: .304; 98; 37. If he maintains his average and gets two more RBIs, that means that he will have hit above .300, drove in above 100 RBIs, and jacked over 30 HRs for eleven straight years. By the way, no one has ever done that before. By the way, he broke his wrist in late June. By the way, he's two years from 500 HRs and 3000 hits (that's code for putting butts in the seats).

So who gets the pleasure of watching the prince of the Dominican swat cowhide for the rest of his career? Well I'm glad you asked. For some reason economists think it's a bad idea to pay 40% of your payroll to one person. That means that to sign Pujols, your payroll has to be $75 million or more to even consider the move. So what I'll do below is establish a tier for thinking about baseball teams. We'll start with the lowest payroll, the Kansas City Royals. To be in the tier of the lowest team, you have to be (roughly) less than 50% more of that team's payroll. You know what, that was hard to explain. But you got into law school, use some of your "games" skills.

Wait what??!!!?? So my ... umm... "editor" just began screaming. I wasn't listening, of course. I was thinking about the tight spiral of a curveball, but she got louder when she saw me making a 32x6 table breaking down every MLB team by salary, division, record, and relative jerkishness for inclusion in this article. Then she got serious and threatened to withhold meatloaf. I need many many meatloaves. So, please believe me when I say that 13 teams can realistically pay for Pujols. Six of those teams have too much money tied up in first basemen and designated hitters (also called "the mockery of baseball"). The L.A. Dodgers franchise is tied up in divorce court, the Twins stretched themselves as thin as they could go, the Mets have bled money for a decade, and Detroit is dying. That leaves four teams with a shot (in order of payroll): the cubs (that's right, no capital letters), Cardinals, and Rangers.

The Rangers just signed a 20-year $3 billion television contract with Fox Sports, but it doesn't start until 2014. In other words, to sign Pujols the Rangers would put him on credit for two years. Reportedly, the Rangers will play their finances close to the chest until that pay day comes in. But if "The Machine" is on the table, the Rangers could ante up.

The cubs, the cubs I can't talk about. To seriously consider the cubs signing Pujols makes my brain move too fast. If we find out that Pujols will where a "c" over his chest for the next ten years, let me give you an insider trading tip. Buy, buy, buy DEO, the NYSE symbol for Diageo, which happens to manufacture the liters of Bulleit Bourbon I'll have to consume to stomach the sight of a Cards-Cubs series.

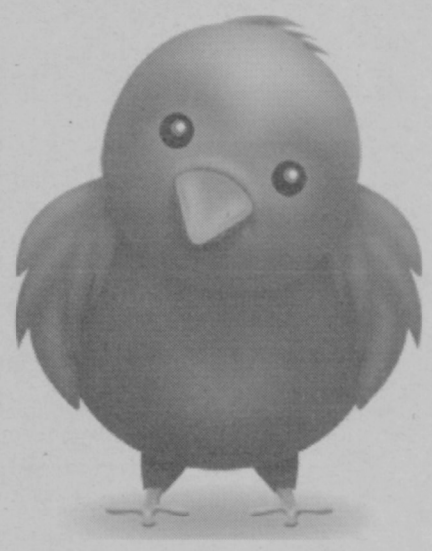
We're 700 words in, that guy has checked into the bathroom twice to see if you're gone yet, and there's no cute, punchy line with which to end this. I've spent 12 months hoping for a home-town discount, but now I'm just hoping he'll consider re-signing. I don't care if it mortgages the Cardinals' future. I don't care if Pujols is actually 34 (he says he's 31). I don't care if it makes Saint Louis uncompetitive from 2017-2022. At this point, I just care much much more about my liver.

BLAKE BEHNKE

Badinage: Twitterball

Well my friends, OCI has come and gone and guess what? Even though I look FANTASTIC in my new suits, I did not get a job. All is not lost though, several of my friends have jobs (Congratulations to you guys!), so worst-case scenario I'll be sleeping on their couches after graduation. As my plan B (in case the couch plan doesn't work out long-term) I am considering alternative employment options. Since legal jobs are hard to come by these days, I've decided to focus my search on highly paid, lucrative jobs that require very little time and skill.

I have decided to become either a full-time pickup basketball player or a Twitterlebrity (that's a celebrity with a Twitter account). I know what you're thinking – "Blake, those jobs require entirely different wardrobes!" While I appreciate your concern, dear readers, Blake Behnke has never been afraid to buy a new wardrobe. And while the clothing requirements for my top two options may be vastly different, the jobs themselves involve many of the same skill-sets. For those of you interested in following me into either of these lucrative extra-legal careers, I will lay out the rules for "Twitter-ball." Please note that in accordance with Twitter guidelines, all rules will consist of 140 characters or less.



Rule #1
You gotta show up. No excuses, No whining. Roll out of bed, throw on the shorts and run to the gym (or start typing). #alarmclockshelp

Rule #2
Respect the superstars. @ConanO-Brien and @KimKardashian have thousands of followers for a reason. In b-ball get the ball to the tall guy.

Rule #3
Get Open! Run around, yell at your teammate, put your hands out for the ball, and tell everyone you meet about your twitter. #@bbehnke

Rule #4
Nobody likes a ball hog. Pass the ball, set a screen, look for the open man. I call out @Kirky_Pdc online and pass him the ball in the game!

Rule #5
Feed your body & mind - your body needs protein, your mind needs stimulation. Egg sandwiches, @HarvardBiz and @TIME.

Rule #6
No @PowerBandz and no sweatbands. Bring the hustle, wear the sweat like a badge of honor, and don't talk about ion tech. #sillybandzareok

Rule #7
Don't overdo it. Work out regularly and often, but don't become a gym rat and don't live your entire life online. #3squaretweetsadayminimum

Rule #8
Practice everywhere. There is no excuse to not practice all day, dribble in class, tweet from the metro. #twitterball

Rule #9
Remember to cool down. Stretch after working out and watch some youtube clips of cats fighting printers after intense tweet sessions.

Rule #10
When in doubt, #trashtalk. Even when u can't back it up. ESPECIALLY when u can't back it up. ask @Kirky_Pdc why he cried on the court

Hopefully, I will eventually find a legal job, but if not I'm preparing for a future fraught with free throws and hashtags and I hope to see more of you on the courts at Lerner (Tues/Thurs at 7:30am) and on Twitter (@bbehnke).

Blake Behnke is still looking for a job. He blogs at http://binkmi.tumblr.com/.

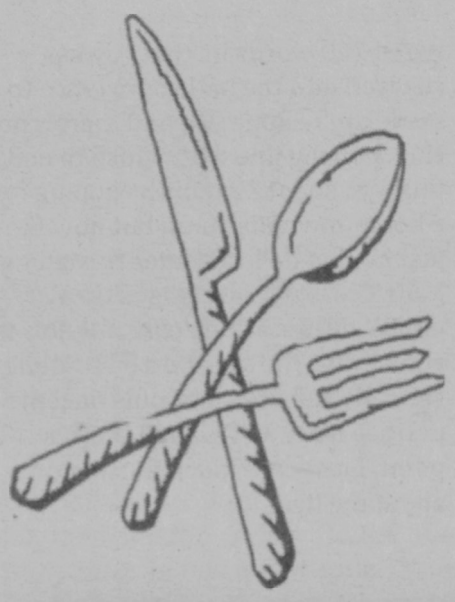
FEATURES

Jonathan Foster

Food Court

First Things First. Prep the Space:

As both the best chefs and law students will tell you, organization is key. If you've ever seen someone prepare an impossibly complicated meal or conquer an unfathomable legal course load, chances are they have mastered the art of preparation. In the kitchen, preparation begins with having a clean slate (counter). Having dirty dishes lying around from last night's meal can be both a physical and mental impediment from the beginning. Clean it up. When studying, "dirty dishes" can clutter the space and distract us from productive work. Try removing the cell phone from the table where your books are and turn off the WiFi on your computer if you don't need it. Facebook will still be there when you get home. If you know you are easily distracted by people, don't study in the lounge. Yes, even people-watching and eavesdropping can be enough to take the mind off of the work.



Divide the tasks:

The best chefs also lay out all of the tools they need for the recipe and have pre-chopped/minced/sliced/shredded every ingredient in the proper amount with all of the ingredients organized before them in little bowls. Such organization allows the process of cooking to be unstressed and unhurried. If you've ever tried to slice the meat and chop the vegetables while the garlic was already frying, you may have experienced the smell of burnt garlic. It ain't pretty. Likewise, people that are able to accomplish large workloads are good at micromanaging the different tasks they need to complete, spending more time up front organizing and less time during their reading trying to find the syllabus.

Can be Prepared Ahead:

Lastly, you may have noticed that many recipes include the words "can be prepared one day ahead" next to some of the sauces, breads, etc. Do this. Putting together a multi-course meal or hosting a dinner party would be impossible without actually having some of the work done ahead of time. Logically, this applies swimmingly to law school, as being able to knock out tomorrow's reading during lunch or between classes can be a lifesaver when you've lost the will to look at words once you've hit the futon in your apartment. Just as you can prepare a pasta sauce the day before and reheat it before serving, you can do the reading days in advance and refresh yourself with your notes or brief in the ten minutes before class.

Cooking Tip #1: Let steak rest.

The sheer frustration of letting a steak rest after it has been cooked can seem counterintuitive and even torturous. But letting a steak rest after it comes off the grill is a restaurant secret to giving more flavor and character to your red meat. As Bon Appetit describes it, fibers relax, juices spread, colors recalibrate and flavors are retained. Your patience will be vindicated when you cut into the meat and realize that all of the tasty juices that used to leak out onto the plate are now, that's right, beautifully integrated into your steak. Allow steak to rest for 8-10 minutes.

Law School Tip #1: Let your papers rest.

We've all heard it at some point in our academic lives, but letting a draft of your paper rest will, like a well-rested steak, prove rewarding in the end. Somehow the ideas in our brains are more flavorful and structured when we return to our papers after at least a day of passive processing (forgetting about them). Then, as we delve back into the paper to make our final draft, the tasty brain juice that used to leak out during nonstop writing sessions will now be artfully concentrated in the fibers of your paper. Allow papers to rest for one to three days.

Christen Gallagher

Snippets

A.J. Kornblith

Korn Feed